

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:07-HC-2177-BR

UNITED STATES OF AMERICA

v.

JAMES BARTON HORN

NOTICE OF RESPONDENT'S REQUEST
THAT COUNSEL WITHDRAW AND
COUNSEL'S REQUEST THAT THE
COURT TAKE APPROPRIATE ACTION

PLEASE TAKE NOTICE that Respondent, by letter dated October 2, 2011 and received October 5, 2011, Respondent strongly requested that the Undersigned withdraw as Counsel of Record for the Respondent.

Counsel brings Respondent's request to the attention of the Court as both Counsel to Mr. Horn and as an officer of this Court. In this dual role, Counsel respectfully requests that the Court consider the following facts, some of which are supportive of Mr. Horn's motion and others are not supportive, as the Court takes appropriate action on this Motion:

- a. This matter is set for hearing on October 24, 2011;
- b. With the consent of the Respondent and under the authority of Orders of this Court, Counsel has retained an additional mental health examiner to examine and evaluate Respondent and, additionally, has retained an expert to assist in the preparation and presentation of Respondent's defense to the Government's petition. Both professionals have rendered substantial expenditures of their time in working towards a full and fair adjudication of this matter and have arranged their schedules to prepare for and participate in the October 24, 2011 hearing;
- c. Respondent, by telephone conversation with Counsel this date, indicated that he would not further discuss trial preparation with the Undersigned Counsel, although Respondent is considered by Counsel to be a necessary witness to this proceeding.

- d. Although the Undersigned Counsel would cooperate fully with substitute counsel's efforts to prepare an effective defense, the employment of substitute Counsel would necessitate a substantial delay in these proceedings. Counsel also stands ready to assist Respondent and to coordinate trial planning and presentation should the Respondent elect to represent himself.
- e. Respondent has previously presented several *pro se* motions to the Court, which were not joined by Counsel. Counsel believes Respondent has not been prejudiced by Counsel's actions, and that the issues raised by those motions are properly preserved in these proceedings. Aside from this issue of representation as set out in this Notice, this action is ready for hearing.

Mr. Horn has requested that this Motion be directed to Judge Britt for his consideration and review.

WHEREFORE, Counsel respectfully prays that

1. the Court treat this Notice as Respondent's Motion that the Undersigned Counsel be relieved as Respondent's Counsel of Record, and
2. the Court take appropriate action on said Motion, including the assignment of substitute counsel should the Court relieve the Undersigned as Counsel of Record or such other measures that would allow Respondent to have effective representation.

This 6th day of October, 2011

/s/ Jerry W. Leonard

JERRY W. LEONARD
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N.C. State Bar No. 2705

The Undersigned certifies that copies of said Motion have been served upon:

R.A. Renfer and Norman Acker
Assistant United States Attorneys
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by electronically filing the foregoing with the Clerk of Court, using the *CMIECF* system which will send notification of such filing to the above.

This, 6th day of October 2011.

/s/Jerry W. Leonard
Attorney for Respondent
PO Box 3
Raleigh, North Carolina 276021
Telephone: 919-831-4767
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ORDER ALLOWING COUNSEL TO
WITHDRAW AND APPOINTMENT OF
SUBSTITUTE COUNSEL

UPON MOTION of the Respondent, the Court finds that it is in the interests of justice that Jerry W. Leonard be allowed to withdraw as Respondent's Counsel of Record and that the Office of the Federal Public Defender appoint substitute Counsel for the Respondent.

WHEREFORE, IT IS ORDERED that Jerry W. Leonard be allowed to withdraw as Respondent's counsel and that substitute counsel be appointed.

This the ____ day of October, 2011.

Judge Presiding

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UPON MOTION of the Respondent, the Court finds that it is in the interests of justice that Jerry W. Leonard be allowed to withdraw as Respondent's Counsel of Record and that the Federal Public Defender appoint substitute Counsel for the Respondent.

WHEREFORE, IT IS ORDERED that Jerry W. Leonard be allowed to withdraw as Respondent's lead counsel. However, Mr. Leonard is retained and is appointed to assist and advise Respondent as requested by the Respondent for trial preparation and presentation.

This the ____ day of October, 2011.

Judge Presiding